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Filing date: **03/03/2015**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Petition for Cancellation

Notice is hereby given that the following party requests to cancel indicated registration.

Petitioner Information

Name	Diageo North America, Inc.		
Entity	Corporation	Citizenship	Connecticut
Address	801 Main Avenue Norwalk, CT 06851 UNITED STATES		

Attorney information	Susan Progoff Dorsey & Whitney LLP 51 West 52nd Street New York, NY 10019-6119 UNITED STATES ny.trademark@dorsey.com, progoff.susan@dorsey.com, osowski.kaydi@dorsey.com Phone:212.415.9200
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Registration Subject to Cancellation

Registration No	3687113	Registration date	09/22/2009
Registrant	Hewitt-Bell, Sandra M 4323 Kingsford Drive Napa, CA 94558 UNITED STATES		

Goods/Services Subject to Cancellation

Class 033. First Use: 2009/07/01 First Use In Commerce: 2009/07/01 All goods and services in the class are cancelled, namely: Grape wine

Grounds for Cancellation

<i>Torres v. Cantine Torresella S.r.l.Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)
Abandonment	Trademark Act section 14

Attachments	HEWITT-BELL Petition to Cancel.pdf(17045 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/sp/
Name	Susan Progoff

Date	03/03/2015
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UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of

Registration No. : 3,687,113
Issue Date : September 22, 2009
Registrant : Sandra M. Hewitt-Bell DBA Hewitt-Bell Wine Cellars
Mark : HEWITT-BELL
International Class : 33

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DIAGEO NORTH AMERICA, INC., :
Petitioner, : Cancellation No.
v. :
SANDRA M. HEWITT-BELL DBA :
HEWITT-BELL WINE CELLARS, :
Respondent.

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PETITION FOR CANCELLATION

Petitioner, Diageo North America, Inc., believes that it is or will be damaged by, and hereby petitions to cancel, Registration No. 3,687,113 of the designation HEWITT-BELL for wine.

COUNT I

1. Petitioner, Diageo North America, Inc., is a Connecticut corporation having its principal place of business at 801 Main Avenue, Norwalk, Connecticut 06851.

2. Upon information and belief, respondent, Sandra M. Hewitt-Bell, is an individual who is doing business as Hewitt-Bell Wine Cellars and has an address at 4323 Kingsford Drive, NAPA, California 94558.

3. For many years, petitioner has been and now is engaged in the business of producing, advertising, offering for sale, selling and distributing a wide range of alcoholic beverages, including wines, throughout the United States.

4. Since long prior to June 20, 2008, the filing date of respondent's application to register HEWITT-BELL, petitioner has been and now is producing, advertising, offering for sale, selling and distributing wine under its trademark HEWITT. Upon the introduction of petitioner's wine so marked upon the market and continuously thereafter, it has become and now is famous, and is well and favorably known to the public and the trade by the trademark HEWITT, which is closely and universally associated with petitioner and its products as a means by which petitioner and its products have become known to the public and their source or origin identified.

5. Petitioner is the owner of Registration Nos. 2,907,426 and 3,695,962 of the trademark HEWITT in the United States Patent and Trademark Office. These registrations are presently outstanding and validly subsisting.

6. Respondent is the owner of Registration No. 3,687,113 of the trademark HEWITT-BELL for wine, issued on September 22, 2009.

7. Upon information and belief, respondent has discontinued use in commerce as defined in the United States Trademark Act, 15 U.S.C. § 1051, et seq., of the designation HEWITT-BELL for wine, and has no intent to resume such use.

8. Registration No. 3,687,113 has become abandoned and should be cancelled under Section 14(3) of the United States Trademark Act, 15 U.S.C. § 1064(3).

9. Petitioner is likely to be, and is being, harmed by the continued registration of Registration No. 3,687,113 of the trademark HEWITT-BELL, which if used is likely to cause confusion with petitioner's trademark HEWITT, because the existence of Registration No. 3,687,113 is likely to interfere with petitioner's continued rights in petitioner's well-known registered trademark HEWITT, which has long been used for, and is registered for, wine.

COUNT II

10. Petitioner repeats and reavers paragraphs 1 through 9 of the Petition for Cancellation.

11. Upon information and belief, on or about September 26, 2014, respondent filed with the United States Patent and Trademark Office a "Declaration of Use and/or Excusable Nonuse of Mark in Commerce Under Section 8" ("Section 8 Declaration") for Registration No. 3,687,113, in which respondent represented to the Patent and Trademark Office that the mark covered by Registration No. 3,687,113, namely, HEWITT-BELL, was on September 26, 2014, still in use in commerce in connection with wine.

12. Upon information and belief, respondent was not using the mark HEWITT-BELL in commerce in connection with wine on September 26, 2014, when its Section 8 Declaration was signed and filed with the Patent and Trademark Office.

13. Upon information and belief, respondent made the representation set forth in paragraph 11 above knowing such representation to be false, and such representation was made with the intent of deceiving the Patent and Trademark Office into maintaining Registration No. 3,687,113 on the Register, thereby maintaining rights in the HEWITT-BELL trademark to which respondent was and is no longer entitled.

14. Respondent's knowing execution and filing of a false Section 8 Declaration to maintain Registration No. 3,687,113 constitutes fraud, and consequently Registration No. 3,687,113 should be cancelled under Section 14(3) of the United States Trademark Act, 15 U.S.C. § 1064(3).

WHEREFORE, petitioner prays that its Petition for Cancellation be granted and that Registration No. 3,687,113 be cancelled.

Respectfully submitted,

DORSEY & WHITNEY LLP

Dated: March 3, 2015

By /Susan Progoff/
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Attorneys for Opposer,
Diageo North America, Inc.

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In re:
Registration No.: 3,687,113
Issue Date: September 22, 2009
Registrant: Sandra M. Hewitt-Bell DBA Hewitt-Bell Wine Cellars
Mark: HEWITT-BELL
International Class: 33

DIAGEO NORTH AMERICA, INC.,

Petitioner,

v.

SANDRA M. HEWITT-BELL DBA :
HEWITT-BELL WINE CELLARS,

Respondent.

Cancellation No.

CERTIFICATE OF SERVICE

I hereby certify the foregoing **PETITION FOR CANCELLATION** has been served upon the Respondent by mailing a true copy thereof by First Class Mail, postage prepaid addressed to:

Sandra M. Hewitt-Bell
4323 Kingsford Drive
Napa, California 94538

On the 3rd day of March 2015.

/tek/

Thomas E. Kearney